



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2010-0423; FRL-9338-3]

#### Mevinphos; Order Revoking Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Order of revocation

**SUMMARY:** EPA is revoking all the tolerances for the pesticide mevinphos. EPA previously required data to be submitted to support these tolerances. However, no person submitted timely notice to EPA of intent to provide the required data.

**DATES:** This order of revocation is effective [*insert date of publication in the Federal Register*]. Objections and requests for hearings must be received on or before [*insert date 60 days after date of publication in the Federal Register*], and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.B. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2010-0423. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S.

Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8037; email address: *nevola.joseph@epa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR**

## **FURTHER INFORMATION CONTACT.**

### *B. How Can I File an Objection or Hearing Request?*

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this order and may also request a hearing on those objections. You must file your objection or request a hearing on this order in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2010- 0423 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before *[insert date 60 days after date of publication in the **Federal Register**]*. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2010- 0423, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## **II. EPA's Order to Revoke Tolerances**

### *A. What Action is the Agency Taking?*

Pursuant to FFDCA section 408(f), EPA determined that additional data are reasonably required to support the continuation of the tolerances for mevinphos which are codified at 40 CFR 180.157. In the **Federal Register** of June 29, 2011 (76 FR 38037) (FRL-8879-2), EPA issued a final data call-in order in follow-up to a proposed order which published in the **Federal Register** on July 28, 2010 (75 FR 44181) (FRL-8835-7). In the final data call-in order of June 29, 2011, EPA required the submission of various data to support the continuation of the tolerances for the pesticide mevinphos. Because there are currently no domestic registrations for mevinphos, these tolerances are referred to as "import tolerances." According to the terms of the order, if the Agency did not receive a section 408(f) Response Form identifying a person who agrees to submit the required data within 90 days after publication of the final order (September 27, 2011), EPA would proceed to revoke the mevinphos tolerances at 40 CFR 180.157.

On July 11, 2011 (76 FR 40628) (FRL-8879-2), EPA published a notice in the **Federal Register** in which the Agency made a minor correction regarding the final data call-in order of June 29, 2011. Subsequently, EPA received no submissions of the

“§408(f) Order Response” form within the required 90-day period. Therefore, in this order, EPA is revoking all the tolerances for the pesticide mevinphos in 40 CFR 180.157, which includes tolerances for the following commodities: Broccoli, cabbage, cauliflower, celery, cucumber, grape, lettuce, melon (determined on the edible portion with rind removed), pea, pepper, spinach, squash, summer; strawberry, tomato, and watermelon.

This tolerance revocation order for mevinphos is subject to the objection and hearing procedure in FFDCA section 408(g)(2) but the only material issue in such a procedure is whether a submission required by the order was made in a timely fashion.

*B. What is the Agency's Authority for taking this Action?*

Under FFDCA section 408(f)(2), if no response is received to an order issued pursuant to section 408(f)(1), EPA may by order published in the **Federal Register** revoke the tolerance or exemption in question.

*C. When Do These Actions Become Effective?*

As stated in the DATES section, this order is effective on the date of publication in the **Federal Register**. An order issued under FFDCA section 408(f)(2) shall take effect upon publication unless the regulation or order specifies otherwise. However, the Agency may stay the effectiveness of the regulation or order if, after issuance of such regulation or order, objections are filed with respect to such regulation or order pursuant to FFDCA section 408(g)(2). (21 U.S.C. 346a(g)(1)).

Any commodities listed in the regulatory text of this document that are treated with the pesticide subject to this order, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the Food Quality Protection Act (FQPA). Under this unit, any residues of the pesticide in or

on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under the Federal Insecticide, and Rodenticide Act.
2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

### **III. Statutory and Executive Order Reviews**

This action, which revokes tolerances due to a failure to comply with a data call-in order, is in the form of an order and not a rule. (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedures Act (APA), orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on a rulemaking do not apply to this action, as explained further in the following discussion.

#### *A. Executive Order 12866 and Executive Order 13563*

Because this order is not a “regulatory action” as that term is defined in Executive Order 12866 entitled “*Regulatory Planning and Review*” (58 FR 51735, October 4, 1993), this action is not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563 entitled “*Improving Regulation and Regulatory Review*” (76 FR 3821, January 21, 2011),

#### *B. Paperwork Reduction Act*

This action does not impose additional burdens that require approval by OMB

under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). The information collection activities associated with the prior order requesting data from any party interested in supporting the tolerances being revoked today were approved by OMB under OMB Control No. 2070-0174, and are identified by EPA ICR No. 2288.01. Burden is defined at 5 CFR 1320.3(b). Under the PRA, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

*C. Regulatory Flexibility Act*

Since this order is not a rule under the APA (5 U.S.C. 551(4)), and does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

*D. Unfunded Mandates Reform Act; and Executive Orders 13132, and 13175*

This order directly regulates growers, food processors, food handlers and food retailers, not States or tribes; nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132 entitled “*Federalism*” (64 FR 43255, August 10, 1999) and Executive Order 13175 entitled “*Consultation and Coordination with Indian Tribal Governments*” (65 FR 67249, November 9, 2000) do not apply to this order. In addition, this order does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531-1538).

*E. Executive Orders 13045, 13211 and 12898*

As indicated previously, this action is not a “regulatory action” as defined by Executive Order 12866. As a result, this action is not subject to Executive Order 13045, entitled “*Protection of Children from Environmental Health Risks and Safety Risks*”, (62 FR 19885, April 23, 1997) and Executive Order 13211 entitled “*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*”, (66 FR 28355, May 22, 2001). In addition, this order also does not require any special considerations under Executive Order 12898 entitled “*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*” (59 FR 7629, February 16, 1994).

*F. National Technology Transfer and Advancement Act*

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), (15 U.S.C. 272 note).

**IV. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.* does not apply because this action is not a rule as that term is defined in 5 U.S.C. 804(3).



**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 2012.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180--[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

**§ 180.157 [Removed]**

2. Remove § 180.157.